

FRN: 0005 1512 12

<sup>2</sup> The New York Office previously had issued a warning letter to Classic on April 14, 2004 for operating without a license on 31.02 MHz.

direction-finding vehicle, monitored the frequency, 31.02 MHz, and again observed transmissions coming from Classic Car Service Corporation, located at 38-12 Astoria Blvd, Astoria, NY 11104.

5. On August 25, 2004, the New York Office sent a Notice of Violation to Classic for operation on the unauthorized frequency 31.02 MHz, in violation of Section 1.903(a) of the Rules. The Notice of Violation was sent via certified mail and the New York Office received the certified return receipt indicating that the Notice was received and signed for on August 26, 2004.

6. On September 13, 2004, a Commission agent, using mobile direction-finding equipment, monitored the frequency 31.02 MHz and again observed transmissions coming from Classic Car Service Corporation, located at 38-12 Astoria Blvd, Astoria, NY 11104.

7. On September 15, 2004, the New York Office received a response to the Notice of Violation, via facsimile, stating that Classic had made all the necessary adjustments and that it no longer was operating on the frequency 31.02 MHz.<sup>3</sup> On November 2, 2004, a Commission agent conducted a station inspection with Mr. Rodriguez and confirmed that there no longer were any base stations or mobile units operating on the frequency 31.02 MHz.

8. On March 17, 2005, the New York Office released a *Notice of Apparent Liability for Forfeiture* (“NAL”) proposing a forfeiture in the amount of four thousand dollars (\$4,000) to Classic for violating Section 1.903(a) of the Rules by operating radio transmitting equipment on the unauthorized frequency of 31.02 MHz.<sup>4</sup> Classic filed a response to the NAL on April 13, 2005.

### III. DISCUSSION

9. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Classic’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>7</sup>

10. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services be used and operated only with a valid authorization granted by the Commission. Classic does not deny that it operated on the frequency 31.02 MHz without a valid authorization. Classic seeks a reduction, however, based on its history of overall compliance with the Commission’s Rules, the immediacy of its remedial efforts, and its inability to pay.

11. We do not agree with Classic that it is entitled to a reduction because it “has always

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<sup>3</sup> The Notice of Apparent Liability issued on March 17, 2005 (see *infra* para. 7), indicated that Classic did not respond to the Notice of Violation issued on August 25, 2004. We have determined that Classic responded via facsimile sent to the New York Office on September 15, 2004.

<sup>4</sup> *Classic Car Service*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532380003 (Enf. Bur., New York Office, released March 17, 2005).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

abided by [the Commission's] rules and regulations." On August 12, 2004, agents of the New York Office determined that Classic was operating without a valid license on 31.02 MHz in Astoria, New York. On that same day, agents conducted an inspection of the station and warned Classic of the unauthorized operation. Notwithstanding the oral warning, agents determined on two more occasions that Classic continued to operate on 31.02 MHz. Moreover, a review of the Commission's database reveals that, on April 14, 2004, the New York Office issued an NOV to Classic for violating Section 1.903(a) of the Rules by operating station WPTN612 with an effective radiated power in excess of that permitted under its license.<sup>8</sup> We therefore conclude that Classic is not entitled to a reduction based on a history of overall compliance.

12. We also decline to reduce the forfeiture based on Classic's claim that it worked diligently to correct the violation as soon as it received the Notice of Violation. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>9</sup> Moreover, as described in the preceding paragraph, Classic did not cease operating on the unauthorized frequency until six months after it first was warned of the unauthorized operation by the New York Office.

13. We do find, however, that based on Classic's demonstrated inability to pay, the proposed forfeiture amount should be reduced to \$2,500.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> Classic Car Service Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand five hundred dollars (\$2,500) for willful and repeated violation of Section 1.903(a) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>12</sup>

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<sup>8</sup>*Classic Car Service*, Notice of Violation, File No. EB-04-NY-073, NOV No. V20043238009 (rel. April 14, 2004).

<sup>9</sup>*See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>10</sup>47 C.F.R. §§ 0.111, 0.311, 0.180(f)(4).

<sup>11</sup>47 U.S.C. § 504(a).

<sup>12</sup>*See* 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Classic Car Service Corporation at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Russell Monie, Jr.  
Regional Director, Northeast Region  
Enforcement Bureau